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In The

SUPREME COURT of the UNITED STATES

October Term, 1966

Number 634

MINISTERS LIFE AND CASUALTY UNION,
Appellant,

vs.

ROBERT D. HAASE,
Commissioner of Insurance,
and
BRONSON C. LA FOLLETTE,
Attorney General of the State of Wisconsin,
Appellees.

APPEAL FROM THE SUPREME COURT
OF THE STATE OF WISCONSIN

MOTION OF APPELLEES TO DISMISS APPEAL AND BRIEF

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APPEAL FROM THE SUPREME COURT
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MOTION TO DISMISS

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the appeal taken herein be dismissed on the ground that no substantial Federal question is presented.

QUESTIONS PRESENTED

Does the application of the regulatory and taxing provisions of Section 201.42 of the Wisconsin Statutes to the individual and group life and health insurance business of the appellant, a Minnesota corporation not licensed in Wisconsin, with Wisconsin residents, which business is conducted through the United States mail and by using in Wisconsin investigatory and medical services paid for by the appellant, violate the commerce, due process, contract or postal clauses of the Constitution of the United States?

STATEMENT OF CASE

The following facts were found by the trial court. Page references are to the pagination of the record in this Court.

Appellant, a Minnesota corporation, is a mutual legal reserve insurance company having its home and only office in Minnesota. All of its policyholders are members of the company and the owners thereof. Appellant writes life and accident and health insurance, covering only persons engaged in religious work or study and their families, throughout the United States and Canada, operating generally on a mail-order basis. It is licensed in most Canadian provinces and in the states of Minnesota, California, Georgia, Illinois, Indiana, Kentucky, Ohio, Tennessee, Texas and Virginia, but not in Wisconsin. Except for Minnesota and Ontario—where appellant was licensed much earlier—it became licensed in such jurisdictions from 1953 to 1957. Appellant has one agent in Canada and one in each state, except Kentucky and Virginia, in which it is licensed (R. 146-147).

At the close of 1961, appellant's admitted assets were $23 million, its reserves were $13.6 million, its surplus was $2.8 million and its insurance in force was $101 million. During 1961 its insurance written was $19 million and its total premium received was $7,229,000, of which $3,373,921 was derived from jurisdictions in which it was licensed. Appellant has returned to its policyholders in payment of accident and health claims a higher proportion of premiums collected than the national average of all accident and health insurers (R. 147-148).

Appellant issues individual life and accident and health, group life and franchise group accident and health insurance policies. The appellant has no right to cancel the life policies, so long as premiums are paid; and many of the individual accident and health policies give the insureds the right to continue the policies for extended periods by timely premium payments. Appellant renews, collects premiums upon and services its policies regardless of whether the policyholder continues to reside in the state of his residence at the issuance of the policy, and approximately one-third of appellant's policies now held by Wisconsin residents were issued when the policyholders resided elsewhere (R. 148-149).

In August, 1962, appellant had in force 626 individual life policies averaging $3,750 each, 1842 individual accident and health policies, two group life policies covering 85 persons and six franchise group accident and health policies covering 350 persons, all of which insureds were then Wisconsin residents (R. 149).

Appellant solicits the sale and renewal of policies to residents of all states through mail solicitation and magazine advertisements. In those states wherein appellant is licensed, it also solicits through its licensed agents; but most of appellant's policies covering residents of such states are solicited by magazine advertisements or by mail from the home office (R. 149-150).

Appellant collects premiums upon and services all of its policies by mail between the home office and policyholders at their residences. Almost all premium payments are mailed by policyholders to the appellant's home office (R. 150).

Approximately six times each year the appellant mails from its home office to an estimated 60,000 to 140,000 persons printed matter soliciting the purchase or renewal of insurance; and approximately twelve times each year appellant mails particular solicitations to from 6,000 to 8,000 persons deemed to be good prospects because of birthdays, marriages or birth of children. Annually about 25,000 solicitations are mailed by appellant to approximately 3,600 Wisconsin residents. The advertising material of the appellant is not approved, prior to use, by the Minnesota commissioner of insurance but is filed with him (R. 150-151).

Policies sold by appellant through mail solicitation are effected by the prospect mailing to the home office an application usually accompanied by the first premium. Appellant, upon approving the application, mails the policy to the insured, making it effective on the date the application and premium were received. Appellant's articles of incorporation provide that a person becomes a member by the delivery and acceptance of a policy. Appellant, in accord with general practice of mail order companies, allows an applicant to examine and reject a policy, in which case the premium is refunded (R. 151-152).

If, for underwriting purposes, appellant requires information additional to that in the application, appellant obtains such information through correspondence with the applicant, his local doctor or one selected by appellant or a nation-wide investigatory agency. The fees of such doctors and agencies are paid by appellant. Medical reports and physical examinations by local doctors are an integral part of appellant's business. Except for a medical director at the home office, appellant maintains no doctor in any

state for underwriting or claim settlement purposes (R. 152.)

Appellant utilizes the services of three nation-wide investigatory agencies to make local investigations and reports for purposes of underwriting and claims settlement. Such agencies are independent contractors, but appellant pays their charges and determines the extent of the investigations. Obtaining information by such local investigations is an integral part of appellant's business (R. 153).

In appellant's group life and group franchise accident and health business a leader selected by the group represents it in negotiating the insurance contract with the home office by mail or telephone. The leader is not paid by appellant. He obtains executed enrollment cards or applications from members of the group and forwards such papers, together with the first premium to the home office by mail. Subsequent premium billings for group life are sent by appellant to the leader who collects premiums and mails them to appellant. When a new member joins the group, the leader obtains from him an executed enrollment card or application and mails it to appellant. Appropriate forms and advertising material are mailed to the leader from the home office (R. 153-155).

Payments of benefits under appellant's policies are approved by the home office and made by checks drawn on a Minneapolis bank and mailed to the beneficiaries or claimants, except where payment to a hospital or doctor is requested. Claims are made upon forms mailed from the home office to claimants or beneficiaries and by them completed and mailed back to the home office. When appel-

lant requires additional information, it is obtained by mail between the home office and claimants, beneficiaries and local doctors and officials and by local investigations and physical examinations. Such investigations and examinations are paid for by appellant, are made through a procedure similar to that used for underwriting examinations and investigations and are an integral part of appellant's business. Appellant handles claims under all policies in the same manner, regardless of whether the policy was issued to, or the claim is made by, a resident of a state in which appellant is licensed (R. 155-157).

Other than the previously mentioned group leaders, local doctors and investigatory agencies, appellant has no officer, agent or employee in Wisconsin for doing any kind of insurance business (R. 157).

Any excess of premiums over expenses, claims paid and reserves is either returned to appellant's policyholders as dividends, used to make rate adjustments or retained as surplus. Dividends are paid only on life policies. Appellant's surplus increased from $1,630,133 on December 31, 1951, to $2,835,713 on December 31, 1961. Appellant uses the same rates and dividend scales in all states, regardless of whether a policyholder resides in a state where appellant is licensed and pays premium taxes and fees. Thus every policyholder in a state where appellant is not licensed contributes more toward payment of such taxes and fees and to surplus than does a resident of a state where appellant is licensed (R. 158-159).

In 1961 fees paid by appellant to states in which it was licensed and to Canadian provinces totaled only $5,481, or

less than 2/10 of 1% of the $3,374,000 premium income from those states and provinces. The following table shows appellant's 1961 and 1955 premium income from Wisconsin and each state where appellant is licensed:

	1961	*1955*
Wisconsin	$208,240	$ 83,516
California	782,688	175,317
Georgia	100,085	36,140
Illinois	434,451	169,049
Indiana	185,960	76,207
Kentucky	96,985	50,546
Minnesota	442,378	157,542
Ohio	304,764	131,932
Tennessee	101,360	51,039
Texas	394,934	139,261
Virginia	137,374	76,655

Fees and charges payable by a foreign insurance company licensed in Wisconsin are modest and impose no substantial burden on a company such as appellant. They are $200 for initial license, $25 for annual renewal, $25 for filing the required annual statement and not over $.01 per $1,000 of life insurance reserves. Wisconsin fees for a resident insurance agent's license also are modest and would impose no substantial burden on appellant. Such fees are $5 for examination, $1 for initial license and $1 for annual renewal (R. 159-160).

Premium taxes imposed by states and provinces where appellant is licensed are from 2% to 3½% of premium in-

come from the state or province. The premium tax imposed by sections 76.32 and 76.34, Wisconsin Statutes, on foreign life and casualty insurance companies is 2% of premiums on policies on lives of Wisconsin residents. Such tax would not constitute a substantial or undue burden upon appellant (R. 160).

Policies issued by appellant to residents of a state where appellant is licensed are submitted to regulatory officials of such state prior to use. Insurance companies licensed in various states use a prototype of policy complying with requirements of most states, with separate endorsements to satisfy requirements of individual states. Appellant uses this method for complying with requirements of states where it is licensed. Appellant annually files a statement with the Minnesota insurance department and a copy with the regulatory authority of each state where appellant is licensed. Filing a copy with the Wisconsin insurance commissioner would impose no burden on appellant other than a nominal filing fee (R. 160-161).

Appellant is subject to examination by each state where it is licensed. Under the zone examination system of the National Association of Insurance Commissioners a single examination is made for all states where appellant is licensed. Under such system, no additional examination would be conducted by Wisconsin (R. 161).

Foreign insurance companies licensed in Wisconsin conduct mail order insurance business from their home offices with Wisconsin residents. The regulatory cost to appellant from becoming licensed in Wisconsin would not be burdensome (R. 161).

There are serious abuses in solicitation and other practices of foreign insurance companies not licensed in a state but doing a mail order business with residents of such state, and effective regulation thereof is a problem. The problem exists in Wisconsin. Since 1945 there has been a substantial increase in the number of foreign companies not licensed in Wisconsin but conducting a mail order business covering residents and risks in Wisconsin, and in 1962 there were at least 79 such companies. Regulation of such business, by the Federal Trade Commission or by the state of domicile of such a company, is inadequate to protect the interests of Wisconsin residents. Minnesota lacks authority to approve or disapprove policy forms issued to Wisconsin residents (R. 161-162).

Wisconsin carries on substantial activities which reduce potential losses under policies of life and accident and health insurance covering Wisconsin residents and substantially benefit a company issuing such policies. These activities include licensing and regulating professions, businesses and institutions affecting public health and safety; enforcement of public health standards; operation of public insfitutions for treating the sick, a comprehensive workmen's compensation program and police and fire protection systems; and the regulation of motor vehicles and highway use (R. 162-163).

The apellant's activities by mail in soliciting, issuing and servicing life and accident and health insurance policies with Wisconsin residents while they are within the state are regular, systematic and continuous and with large numbers of Wisconsin residents. Such activities are not isolated and infrequent (R. 163).

Upon these facts the trial court entered judgment declaring that section 201.42, Wisconsin Statutes, was constitutional and applicable to appellant in the conduct of its insurance business with Wisconsin residents and that appellant must comply with such statute. That judgment was affirmed by the Wisconsin Supreme Court.

ARGUMENT

The issue in the present case is whether the Wisconsin statute involved is constitutional and applicable to appellant, not whether it may be applicable to some other insurance company operating by different methods, having different contacts with Wisconsin and its residents and having a different impact upon the interests of Wisconsin. The opinion of the Wisconsin Supreme Court makes this clear by saying:

> "• • • We do not hold, however, that any one single act defined as doing business in the state in sec. 201.42 is alone sufficient for the application of the section to a given business. Each set of facts must be considered on its own merits when applying the statute." (R. 307)

No Substantial Federal Question Is Presented

Neither the Notice of Appeal nor the Jurisdictional Statement raises any issue as to the findings of fact made by the trial court and relied upon by the Wisconsin Supreme Court in its decision. Furthermore, the Wisconsin Supreme Court was not asked to pass upon the sufficiency of the evidence to support those findings. In view of this,

the applicability of Federal constitutional provisions in the instant case must be determined in light of those findings of fact. *Fry Roofing Co. v. Wood,* 344 U. S. 157, at 160; *Grayson v. Harris,* 267 U. S. 352, at 358.

Appellant contends that the McCarran-Ferguson Act (Act of March 9, 1945, 59 Stat. 33, 15 U. S. C. secs. 1011 et seq.) limited state taxing and regulatory authority over interstate insurance transactions to such authority as the states had been held to possess at the time the Act was passed. Even if the contention is accepted, the application of sec. 201.42, Wisconsin Statutes, to appellant's business with Wisconsin residents is within the jurisdiction of the state.

Osborn v. Ozlin, 310 U. S. 53, and *Hoopeston Canning Co. v. Cullen,* 318 U. S. 313, were decided in 1940 and 1942, respectively, before the passage of the McCarran-Ferguson Act. Those two cases established that a state has jurisdiction over unlicensed foreign insurance companies insuring risks within her borders, when the regulating state has a sufficient interest in the objects insured and multitudinous activities in connection with the business—before and after the making of the contracts—occur within the regulating state.

The opinion in the *Osborn* case stated, 310 U. S. at 62:

> "Virginia has not sought to prohibit the making of contracts beyond her borders She merely claims that her interest in the risks which these contracts are designed to prevent warrants the kind of control she has here imposed. This legislation is not to be judged by abstracting an isolated contract written in New York from the organic whole of the insurance business,

the effect of that business on Virginia, and Virginia's regulation of it."

This holding of the *Osborn* case was not predicated upon the fact that the plaintiff insurance companies were licensed in Virginia. The statute there involved applied to companies licensed in the state and prohibited such companies from making insurance contracts covering persons or property within Virginia except through licensed, resident agents. The opinion carefully pointed out, 310 U. S. at 65:

> "* * * For it is clear that Virginia has a definable interest in the contracts she seeks to regulate and that what she has done is very different from the imposition of conditions upon appellants' privilege of engaging in local business which would bring within the orbit of state power matters unrelated to any local interests. * * *"

In *Hoopeston* it was said, 318 U. S. at 319:

> "We conclude that in determining whether insurance business is done within a state for the purpose of deciding whether a state has power to regulate the business, considerations of the location of activity prior and subsequent to the making of the contract, Osborn v. Ozlin, supra, of the degree of interest of the regulating state in the object insured, and of the location of the property insured are separately and collectively of great weight. Applying any of these tests, it is apparent that the reciprocals are doing business in New York and are thereby subject to regulation by that state."

The *Osborn* and *Hoopeston* cases were in no way overruled or questioned in *State Board of Insurance v. Todd Shipyards Corp.*, 370 U. S. 451, relied upon by appellant.

In *Todd* the opinion expressly noted that the Court in *Osborn* and *Hoopeston* gave broad scope to local regulation of the insurance business and carefully distinguished *Todd* because there the insurers carried on *no* activities within Texas, the regulating state, by mail or otherwise.

In the instant case, unlike *Todd,* appellant pours thousands of mail and other solicitations into the regulating state annually, utilizes and pays local doctors and investigatory agencies for services in the state, utilizes group leaders to distribute advertisements and obtain applications for insurance, mails into the state policies which are subject to acceptance or rejection by residents within the state and mails into the state checks in payment of claims. Unlike *Todd,* the insurance here is upon the lives and health of thousands of residents of the regulating state.

The limits of state jurisdiction to regulate and tax interstate insurance transactions, as enunciated by this Court prior to the McCarran-Ferguson Act, clearly embrace the power sought to be exercised by Wisconsin over this appellant.

Appellant seeks to compare itself with two *amici curiae* which submitted a brief in the *Todd* case—Church Fire Insurance Corporation and Catholic Relief Insurance Company. Those two companies insured church properties, not the lives and health of thousands of individuals, and their business was much smaller that that of the appellant.

Also their brief discloses nothing akin to appellant's many contacts with Wisconsin.

Cases subsequent to the McCarran-Ferguson Act likewise support the jurisdiction asserted by Wisconsin over this appellant. *Travelers Health Asso. v. Virginia,* 339 U. S. 643, and *Federal Trade Comm. v. Travelers Health Asso.,* 362 U. S. 293.

The Jurisdictional Statement merely presents without argument three questions which scarcely require comment.

Appellant's contentions with regard to Section 10 and clause 7 of Section 8, Article I of the Constitution—the contract and postal clauses—raise no Federal question. The record is devoid of evidence of a single contract the obligation of which might be impaired by enforcement of section 201.42, Wisconsin Statutes. In order to raise a question under the contract clause it would be necessary to point to some contract, valid when made, whose obligations would be impaired by the statute. *Munday v. Wis. Trust Co.,* 252 U. S. 499, at 503. Also, the statute does not attempt to regulate the mail—merely the activities resulting from use of the mails.

Appellant's assertion of a Federal question predicated upon the due process clause and the penal provisions of sec. 201.42, Wisconsin Statutes, is without merit.

CONCLUSION

The facts of this case do not present any substantial Federal question, and the appeal should be dismissed.

Respectfully submitted,

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